IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 239 OF 2006

IN

CHAMBER SUMMONS NO. 710 OF 2005

IN

SUIT NO. 206 OF 2004

Jayantilal Gulabchand Shah .....**Plffs.**
vs.
Amrutlal Kasturchand Shah
and Ors. .....**Defnds.**

Sanjay Jain i/b. A.G. Purohit
for the plaintiffs.
Paritosh Jaiswal i/b. Kanga and Co.
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 31st January,2006.

P.C. :.

1. The present notice of motion is taken out for setting aside the ex-parte order dated 12/7/2005 by

which the chamber summons taken out by the plaintiffs for bringing legal heirs of Defendant no. 1 and 7 on record has been rejected for non-compliance of the conditions which are imposed therein. The two conditions which were imposed was to pay cost of Rs.1500/- because of not effecting service and to file affidavit of service on or before 24.7.2005. The said order further provided that if the conditions are not complied with then the Chamber summons stands dismissed. There is no dispute about non-compliance with the said terms and conditions and therefore by self-operating order chamber summons is already dismissed. However the learned advocate contends that he was not aware of the said order because he did not attend the said matter on 12.7.2005 and thus the order is ex-parte order. Apart from the fact that no ground whatsoever is made out for not remaining present on 12.7.2005 at the hearing of Chamber Summons no. 710 of 2005 but even admittedly there is non-compliance of the order dated 12.7.2005. The only reason given is that the advocate was not well between 10.7.2005 to 13.7.2005. The said

statement in para-8 is not supported by any documentary evidence nor by any affidavit of the advocate.

2. Apart from the aforesaid I am of the view that no leniency can be shown to this plaintiff in the light of the fact that he is prosecuting the proceedings more in default than with any diligence. The earlier Notice of Motion which was taken out being 249 of 2005 for various reliefs also was dismissed for default by an order dated 28.1.2004. Thereafter a Notice of Motion No. 1476 of 2005 which was taken out for restoration of the motion dismissed for default was also required to be withdrawn in view of the fact that the plaintiff had taken no steps for bringing the legal heirs of the deceased defendant no.1 on record. Inspite of the aforesaid I gave an offer to grant the present notice of motion on payment of cost is also rejected by the learned counsel for the plaintiff. In that light of the matter there is no substance in the present motion. Motion dismissed. No order as to costs.

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